



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0376]

RIN 1625-AA00

Safety Zone, James River; Newport News, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the James River in Newport News, VA for multiple periods, one hour in length each, on all weekdays from August 6 until August 15, 2014. This action will restrict vessel traffic movement in the designated area during the United States Navy's operation involving unmanned and remote-operated crafts. This action is necessary in order to protect the life and property of the maritime public due to the high speed maneuvering of the vessels and the experimental nature of the control technology.

DATES: This rule is effective from [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER] through August 15, 2014,

and has been in effect with actual notice since July 30, 2014. It has been or will be enforced from August 6 through August 8, 2014 and August 11 through August 15, 2014, from 9:30 a.m. to 10:30 a.m., 12 p.m. to 1 p.m., and 2 p.m. to 3 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0376]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LCDR Gregory Knoll, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone (757)-668-5581, e-mail Gregory.J.Knoll@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins,

Program Manager, Docket Operations, telephone (202)-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The United States Navy is conducting a demonstration in the James River in the vicinity of the James River Reserve Fleet and Hog Island. A Notice of Proposed Rulemaking (NPRM) was published on July 7, 2014 in the Federal Register (79 FR 38479).

The Coast Guard received two comments on the NPRM, which are addressed below in Section C. No request for a public meeting was received, and no meeting was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. The Coast Guard received the dates and times needed for the waterway closures from the Navy without sufficient time to provide for 30 days of public comment and 30 days advance notice of the Final Rule.

B. Basis and Purpose

The United States Navy's operation will involve over 20 vessels traveling in close proximity to one another at high speeds. The control systems on board these vessels have undergone significant research and development testing, but the experimental nature of them means that there could be an impact on marine traffic in the vicinity.

The Coast Guard will establish a safety zone closing a portion of the James River in the vicinity of the James River Reserve Fleet and Hog Island for multiple periods, one hour in length each, from August 6 through August 8, 2014, and August 11 through August 15, 2014. The safety zone will be effective from 9:30 a.m. to 10:30 a.m., 12 p.m. to 1 p.m., and 2 p.m. to 3 p.m. each day.

C. Discussion of Comments, Changes, and the Final Rule

The Coast Guard received one comment requesting to move the time of the second hour-long window each day to allow for a longer opening in between the two closure periods. The NPRM in 79 FR 38479 stated that the safety zone would be in effect from 9:30 a.m. to 10:30 a.m., 11:30 a.m. to 12:30 p.m., and 2 p.m. to 3 p.m. each day. Instead, the second window will be changed, as requested in the comment received, from 12 p.m. to 1 p.m. each day.

The Coast Guard received one comment concerning the effect of the safety zone on deep draft commercial traffic on the James River and the possible delays to vessels that must sail with the tide for certain sections of the James River outside of the Safety Zone. The Coast Guard reached out to facilities up river of the safety zone to determine vessel schedules from August 6 through August 15, 2014. Based on this information, the effect on tide-restricted vessels will be minimal due to the low volume of this type of traffic. For smaller vessel traffic not restricted by the tide, the limited duration of each closure allows vessels to transit through the area comprising the zone in between the specified one-hour periods. Additionally, the Captain of the Port, Hampton Roads or his designated on-scene Representative may allow vessels to transit through the safety zone during the enforcement period if deemed necessary on a case-by-case basis.

The Captain of the Port of Hampton Roads is establishing a safety zone within the waters of the James River, from James River Channel Lighted Buoy 11 (LLNR 11595), upstream to James River Channel Lighted Buoy 44 (LLNR 11987), bank to bank, in the vicinity of the James River Reserve Fleet and Hog Island, Virginia. This safety

zone will be enforced from August 6, 2014 through August 8, 2014 and August 11, 2014 through August 15, 2014 from 9:30 a.m. to 10:30 a.m., 12 p.m. to 1 p.m. and 2 p.m. to 3 p.m. Access to the safety zone will be restricted during the specified dates and times. No person or vessel may enter or remain in the regulated area without the permission of the Captain of the Port of Hampton Roads.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those orders. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i)

the safety zone will be in effect for a limited duration;
(ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in that portion of the James River during the specified dates and times.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone will only be in

place for a limited duration; and (ii) before the enforcement period, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,

the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately

affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy

Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone. This rule is categorically excluded from further review under paragraph (34) (g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0376 to read as follows:

§ 165.T05-0376 Safety Zone, James River; Newport News, VA.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector Hampton Roads. Representative means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25-10: the James River between James River Channel Lighted Buoy 11 and James River Channel Lighted Buoy 44 from bank to bank.

(c) Regulations. (1) In accordance with the general regulations in §165.23, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Contact on scene contracting vessels via VHF channel 13 and 16 for passage instructions.

(ii) If on scene proceed as directed by any

commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) Enforcement period. This section will be enforced from 9:30 a.m. to 10:30 a.m., 12 p.m. to 1 p.m. and 2 p.m. to 3 p.m. each day from August 6, 2014 through August 8, 2014 and from August 11, 2014 through August 15, 2014.

Dated: July 30, 2014.

Christopher S. Keane,
Captain, U.S. Coast Guard,
Captain of the Port Hampton Roads.